

**Frequently Asked Questions**  
*Washington State Joint Letter on Health Coverage for Same-Sex Spouses*

**1. Why was the joint letter issued?**

The Washington State Attorney General’s Office (AGO) is aware of instances in which same-sex spouses were denied eligibility for health plan benefits because of how an employer, insurance company, or benefit plan administrator defined a “spouse.” The AGO, the Human Rights Commission, and the Insurance Commissioner issued a joint letter to ensure businesses and employees are aware of Washington state laws regarding marriage equality and healthcare coverage for same-sex spouses.

**2. Are health plans required to provide coverage for spouses, including same-sex spouses?**

Health plans are not required to provide coverage for spouses. However, if a health plan provides coverage for spouses, it must provide coverage for same-sex spouses as well as opposite-sex spouses.

**3. How do I find out if my health plan covers my same-sex spouse?**

You may refer to your insurance policy or benefits booklet to see if your health plan provides coverage for dependents, including spouses, and whether there is a definition of “dependent” or “spouse” or any exclusions regarding them. To be certain you understand the terms of your health plan, you should confirm with your employer, insurance company, or the administrator of your health plan about whether your health plan covers dependents, including same-sex spouses.

**4. What laws are being violated if a health plan excludes same-sex spouses from spousal dependent coverage and how does the state enforce those laws?**

- The Washington Law Against Discrimination (WLAD) makes it an unfair practice for an employer to discriminate against any person in compensation or other terms of employment based on sexual orientation [[RCW 49.60.180\(3\)](#)]. An employer who provides health benefits for its employees’ spouses may not discriminate against employees with same-sex spouses by excluding those spouses from receiving health benefits. The WLAD also provides that it is an unfair practice for any person to cancel or fail or refuse to issue or renew insurance based on sexual orientation [[RCW 49.60.178](#)]. The Human Rights Commission can investigate and institute an administrative enforcement action requiring that the discrimination cease and, in appropriate cases, can order monetary damages [[RCW 49.60.250](#)].
- It is a violation of Washington’s Insurance Code for an insurance company to offer a health insurance plan regulated by the Insurance Commissioner that covers spouses but excludes same-sex spouses [[RCW 48.30.300](#)]. The Insurance Commissioner can institute an enforcement action against the company and assess monetary penalties for violations [[RCW 48.02.080](#) and [48.05.185](#)].
- In many cases, excluding same-sex spouses from spousal insurance coverage is a violation of the Consumer Protection Act (CPA). The Attorney General enforces the CPA and brings actions on behalf of the public, not individuals. The Attorney General can institute a court action to prevent unfair or deceptive practices and can also obtain monetary penalties [[RCW 19.86.080](#), [140](#)].

5. **Health insurance policies that are regulated by the Insurance Commissioner are not allowed to exclude same-sex spouses from coverage, if those policies provide spousal dependent coverage. Does the joint letter reflect a change in the regulation of these insurance policies?**

No. The joint letter simply confirms the Insurance Commissioner’s authority to prohibit discrimination based on sexual orientation in the business of insurance [[RCW 48.30.300](#)].

6. **Self-funded employee benefit plans are not regulated by the Insurance Commissioner and are governed by the federal Employee Retirement and Income Security Act (ERISA). How can a state law define who is a “spouse” eligible to receive health benefits under an ERISA plan?**

ERISA does not provide a definition of marriage. Washington state law, however, does define “marry” to include same-sex marriages [[RCW 26.04.010\(3\)](#)]. The United States Supreme Court in [U.S. v. Windsor, 133 S. Ct. 2675 \(2013\)](#), established that the definition of marriage is a state responsibility and struck down a federal law (Defense of Marriage Act) that imposed unequal treatment on a subset of state-sanctioned marriages. The Court rejected the notion that a federal statute could force some couples within a state to live as married for purposes of state law but unmarried for purposes of federal law. Specifically, the Court identified the financial harm to families when a same-sex spouse receives unequal treatment as a result of a federal statute, such as the denial of government healthcare benefits or the increased cost of healthcare when benefits provided by an employer to a same-sex spouse are taxed. The federal preemption provisions in ERISA, likewise, cannot be used to carve out same-sex marriages recognized in Washington state for unequal treatment by excluding them from healthcare benefits that are otherwise provided to other married couples in this state.

7. **How do I know whether my health plan through my employer is an insurance policy regulated by the Insurance Commissioner or is a self-funded health benefit plan?**

It is not always clear to employees whether their health benefits are provided through an insurance company regulated by the Insurance Commissioner or through a self-funded plan established by the employer and administered by a benefits plan administrator that may be an insurance company. How your benefits are provided will determine whether the anti-discrimination provision of the Insurance Code applies to your particular health plan. You should ask your employer about the nature of your chosen health plan. You could also ask the insurance company or benefits administrator identified on your insurance card or benefits booklet. If you cannot obtain this information, the Insurance Commissioner may be able to assist you in finding the answer.

8. **Are there any circumstances when a health plan could be exempt from having to provide health benefits to same-sex spouses even though the plan provides benefits to opposite-sex spouses?**

There is no general exemption from the requirement in Washington state that same-sex spouses should be treated the same as opposite-sex spouses in determining eligibility for coverage under a health plan. However, the laws discussed in the joint letter, namely the WLAD, the Insurance Code, and the CPA may apply to different persons or entities or have certain statutory limitations. For example, there may be limitations on how the WLAD applies to employers with fewer than eight employees or to a religious or sectarian organization not organized for private profit [[RCW 49.60.040 \(11\)](#)]. Whether the limitations in these laws or other laws apply to your circumstances will depend on the specific facts of your situation.

9. **If my health plan does not cover my same-sex spouse, which state agency can I contact for assistance?**

The specific facts of your situation will guide what laws apply and which state agency can best assist you. If you contact one of the three agencies below, they can help you to determine what facts you need and which agency can provide help.

- Contact the Attorney General's Office at [insuranceinquiries@atg.wa.gov](mailto:insuranceinquiries@atg.wa.gov).
- Contact the Human Rights Commission online at <http://www.hum.wa.gov/> or by phone at 1-800-233-3247 (TTY: 1-800-300-7525).
- Contact the Insurance Commissioner online at [www.insurance.wa.gov](http://www.insurance.wa.gov) or by phone 1-800-562-6900.

**10. If my health plan does not cover my same-sex spouse, do I have a private action or remedy against my employer, health plan administrator, or insurance company?**

You should consult with a private attorney if you have questions about whether you have a private action or remedy.